

UTAH OPEN & PUBLIC MEETINGS ACT



Utah Code §§ 52-4-101 et seq.

What is OPMA?

OPMA requires that the public's business be done in public.

- It provides requirements for conducting meetings of public officials, who have the authority to make policy and budget decisions in the public's interest.
- It requires that there be notice and an open deliberative process before a public body votes on matters under its jurisdiction.
- ALL votes are taken in public.



What is a Public Body?

OPMA defines a Public body as:

Any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

1. Is created by the Utah Constitution, statute, rule, ordinance, or resolution;
2. Consists of two or more persons;
3. Expends, disburses, or is supported in whole or in part by tax revenue; **and**
4. Is vested with the authority to make decisions regarding the public's business.

What is a Meeting?



OPMA defines a Meeting as:

“The convening of a public body or specified body, with a **quorum** present, **including a workshop or an executive session**, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body or specific body has jurisdiction or advisory power.”

What isn't a meeting?

OPMA says a meeting does not mean a chance gathering or social gathering.



What is a Quorum?

“Quorum” means a simple majority of the membership of a public body, unless otherwise defined by applicable law.



What isn't a Quorum?



Quorum does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken.

NOTICE and AGENDA

NOTICE

- At least 24 hrs. in advance of meeting;
- Posted at public body's office; and
- Posted on Utah Public Notice Website; and
- Newspaper of general circulation.

AGENDA

- Posted with notice;
- Must be “reasonably specific” (an average person would be on notice as to all topics of discussion and action planned for the meeting).

Notice Requirements

In addition, a public body that holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once a year of its annual meeting schedule.





MEETING MINUTES

Records of Open Meetings

Do we have to keep minutes and/or recordings?

- YES TO BOTH!
- Even though there is an audio recording, the approved written minutes will be the official record.
- Include both written minutes and recording of open meetings as public records.
- Public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

Written Minutes

- Date, time, and place of meeting;
- Names of members present and absent;
- Substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments;
- Record, by individual member, of each vote taken by the public body
- Name of each person who makes a public comment and the substance of the comment; and
- Any other information that is a record of the proceedings of the meeting that any member requests be entered in the meetings or recording.
- Public bodies for whom members are elected must record votes in a list format, by category for each action taken by a member, including yes votes, no votes, and absent members, and by each member's name.





Posting Approved Minutes and Audio Recordings to Public Notice Website

Pending Minutes:

Available to public within 30 days after the meeting (State Public Body and Specified Local Public Body). All other public bodies required to make pending minutes available to public in a reasonable amount of time.

Approved Minutes:

Posted on the PNW within 3 business days of public body's approval (All Public Bodies). A website link to approved minutes may be posted on the PNW for public bodies that are not a State or Specified Local Public Body.

Audio Recordings:

Audio recording or a link to the audio recording posted on the PNW within 3 business days after the meeting (State Public Body). Specified Local Public Body and all other public bodies are required to make audio recording available to public within 3 business days after meeting but no requirement to post.

Electronic Meetings



Public bodies may meet by phone or other electronic means that allows participants to hear or observe communications.

- The public body must adopt by resolution, rules, or ordinance governing the use of electronic meetings, including how a quorum will be calculated in an electronic meeting.
- Notice requirements still apply.
- The public must have a means to attend or participate.
- May be held without an anchor location if it presents a substantial risk to health or safety but requires written determination by the chair of the public body.
- Roll-call vote required for non-unanimous actions.

Electronic Message Transmissions

The Open Public Meetings Act does not restrict members of a public body from transmitting an electronic message to other members of the public body when the body is **not** in an open meeting.



Emergency Meetings



Due to unforeseen circumstances that must be articulable.

- An example might be a broken water line that cannot wait for the next scheduled meeting.
- Emergency!

Failure to comply with OPMA requirements isn't an unforeseen circumstance.

Requires best notice practicable.

Cannot be held unless an attempt has been made to notify all members of the public body and a majority of the members approve the meeting.

**KEEP
OUT**

Closed Meetings

- A public body can go from an open meeting into a closed meeting under certain circumstances.
- 52-4-205 lists **all** of the reasons for closing an open meeting.
- A quorum must be present. A motion to close the meeting must be made, naming the specific statutory reason for closure. Then, a roll call vote must be taken. Two-thirds of the body must approve the closed meeting.
- If the closed meeting is held to discuss 52-4-205(1)(a), (1)(f), or (2), the presiding member of the public body is to execute a sworn statement that the sole purpose of the closed meeting was to discuss these issues. No recording is required.
- If the meeting is closed for any other statutory reason, a recording shall be made, and written minutes can also be made. These are protected records under GRAMA.
- **NO VOTES ARE TAKEN IN CLOSED MEETINGS**
(Except allowed to end a closed meeting)

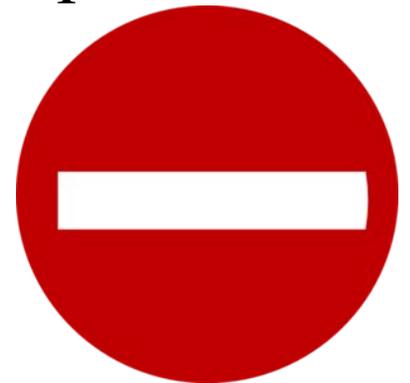
Reasons a Meeting May be Closed

1. To discuss character, professional competence, or physical or mental health of an individual (doesn't require recording if the chair signs an affidavit after);
2. To discuss collective bargaining;
3. To discuss pending or reasonably imminent litigation;
4. To discuss the purchase, exchange, or lease of real property, if public discussion would disclose the appraisal value or prevent the transaction on the best possible terms;
5. To discuss the sale of property, if public discussion would disclose the appraisal value or prevent transaction on best possible terms as long as there's public notice of sale and terms are disclosed before the sale;
6. To discuss security personnel, devices, or systems (doesn't require recording if the chair signs an affidavit after);
7. To discuss investigative proceedings regarding allegations of criminal misconduct; and
8. A few other exceptions relating to the Legislature, Higher Education and the Utah Procurement Code.

What is Forbidden During a Closed Meeting?

You may not:

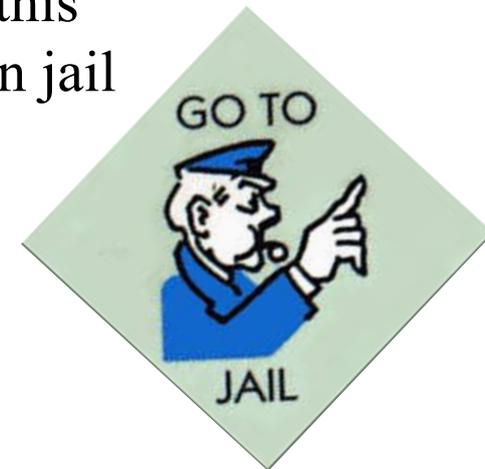
- Approve an ordinance, resolution, rule, regulation, contract, or appointment.
- Interview a person to fill an elected position.
- Take final action: Final votes must be open and on the record.



What Happens if Someone Violates OPMA?

A court can void any action in violation of the law:

- Sometimes a violation can be cured by discussing and taking a public vote in a subsequent meeting.
- May have to pay court costs and attorney fees.
- “In addition to any other penalty under this chapter, a member of a public body who intentionally violates or intentionally abets or advises in violation of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.” (6 months in jail and/or \$1,000 fine)



Remedies & Enforcement

Voiding final action

- Any final action taken in violation of Section 52-4-201*, 52-4-202*, 52-4-207, or 52-4-209 is voidable by a court of competent jurisdiction.
- Must file a complaint with the court within **90 days** of final action. If the alleged violation involves bonds, notes, or other evidences of indebtedness the Complaint must be filed within **30 days**.
- **Does not apply to some notice exemptions for municipalities, special district with less than \$1 million annual budgets.*

Who can take action?

- Attorney General and County Attorneys
- Any party denied a right by the action taken
- Court may order compliance and enjoin violation
- Aggrieved party may recover attorney's fees



Disruption of Meetings

OPMA does not prohibit the removal of any person from a meeting if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.





TRAINING

The presiding officer of a public body shall ensure that the body receives OPMA training on an annual basis.

Common Violations of OPMA

- Closing meeting without members of the public body voting first in an open meeting to close the meeting.
- Conducting a closed meeting for reasons other than those allowed by OPMA.
- Taking official or final action in a closed meeting.
- Failing to properly provide notice of a public meeting.
- Taking action or voting on items not listed on the agenda (discussing items not noticed on the agenda is ok).



Parting Tips and Helpful Suggestions:



- 24-hour notice
- Be specific with agenda items
- No “old business, new business”
- “Action taken on items discussed in closed meeting” is not enough
- Close meetings only for allowed statutory purposes and follow the process
- Provide minutes in a timely manner
- Don’t text during meetings
- Receive training once a year
- Err on the side of transparency
- When in doubt, consult your legal counsel